

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No. 81-1232-CIV-J-M
	)	
v.	)	Filed: December 22, 1981
	)	
AMERICAN MAIZE-PRODUCTS	)	
COMPANY and BAYUK CIGARS,	)	
INC.,	)	
	)	COMPLAINT
Defendants.	)	<u>INJUNCTIVE RELIEF SOUGHT</u>

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

1

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended (15 U.S.C. § 25), in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

2. American Maize-Products Company, through its wholly-owned subsidiary, Jno. H. Swisher & Son, Inc., transacts business, maintains offices, and is found within the Middle District of Florida. Jno. H. Swisher & Son, Inc., maintains its principal place of business within the Middle District of Florida.

3. Bayuk Cigars, Inc., transacts business within the Middle District of Florida.

11

DEFINITIONS

4. As used herein:

- a. The term "cigar" means any roll of tobacco wrapped in tobacco leaf or reconstituted

tobacco and weighing more than three pounds per thousand;

- b. The term "little cigar" means any roll of tobacco wrapped in tobacco leaf or reconstituted tobacco and weighing three pounds or less per thousand;
- c. The term "cigarette" means any roll of tobacco wrapped in paper or in any substance not containing tobacco.

111

DEFENDANTS

5. American Maize-Products Company ("American Maize") is made a defendant herein. American Maize is a corporation organized and existing under the laws of the State of Maine, with its principal offices in Stamford, Connecticut. American Maize conducts its business operations in part through subsidiary corporations. Through its subsidiary Jno. H. Swisher & Son, Inc. ("Swisher"), a Delaware corporation, American Maize is engaged in the manufacture and sale of cigars in the United States and foreign countries. American Maize's net sales for 1980 totaled \$413,707,000. Swisher's net domestic cigar sales were \$44,535,760. Swisher sells its cigars throughout the United States.

6. Bayuk Cigars, Inc. ("Bayuk"), is made a defendant herein. Bayuk is a corporation organized and existing under the laws of the State of Maryland, with its principal offices in Fort Lauderdale, Florida. Bayuk is engaged in the manufacture and sale of cigars in the United States. It also trades in securities and commodities. Bayuk's net sales of cigars in 1980 were \$27,546,000. Bayuk sells its cigars throughout the United States.

TRADE AND COMMERCE

7. Cigars are distinct from all other tobacco products in their component raw materials, physical characteristics, means of production, pricing, and merchandising. Cigars are recognized by the industry and by consumers as a product distinct from other tobacco products, including little cigars, cigarettes, chewing tobacco, and snuff.

8. In 1980 total domestic cigar sales were 3.952 billion units, not counting returns. Their value at the manufacturing level was less than \$425 million. A small portion of this total consists of the sale of cigars imported from other countries.

9. Cigar manufacturing is a concentrated industry. In 1980 the four largest domestic cigar manufacturers accounted for approximately 70 percent of total unit sales and 60 percent of total dollar sales, and the eight largest accounted for approximately 86 percent of total unit sales and 77 percent of total dollar sales.

10. Swisher is the second largest manufacturer of cigars in the United States by unit volume of sales and the third largest by dollar volume of sales. Swisher's share of the domestic cigar market is approximately 19.6 percent on a unit basis and 10.5 percent on a dollar basis. Swisher's principal brands are King Edward and Swisher Sweets. King Edward is the largest selling brand of cigar, by units, in the United States. All of Swisher's cigars sell for fifteen cents each or less at retail. Swisher is the largest producer of cigars in this price range.

11. Bayuk is the fourth largest manufacturer of cigars in the United States by unit volume of sales and the fifth largest by dollar volume of sales. Bayuk's share of the domestic cigar market is approximately 7.7 percent on a unit basis and 6.5 percent on a dollar basis. Bayuk's principal brands are Garcia y Vega and Phillies. Phillies sell for fifteen cents each or



less at retail and are a major competitor of the brands sold by Swisher. Garcia y Vega cigars sell for between seven cents and seventy-five cents each at retail and are also competitive with the brands sold by Swisher.

12. Cigar manufacturing is a declining industry. The number of cigars sold in the United States has steadily decreased for more than a decade and may continue to do so in the future. Most companies in the industry, however, including Swisher and Bayuk, are profitable.

13. The vast majority of cigars are sold in interstate commerce by manufacturers or importers to wholesalers, who distribute them to retailers. The ability of a cigar manufacturer to reach the retail market with its products depends greatly upon the willingness and ability of wholesalers to promote and service that manufacturer's product. Obtaining the distribution, promotion, and consumer acceptance necessary to the introduction of a new product is difficult.

## V

### VIOLATION ALLEGED

14. On or about January 2, 1982, subject to shareholder approval, Bayuk will transfer all of its cigar business assets to Swisher in exchange for approximately \$14,500,000. Thereafter, Bayuk will liquidate its remaining assets and cease operations.

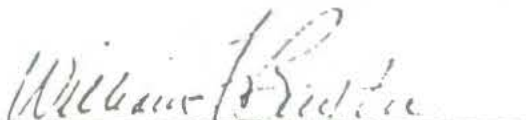
15. The effect of this acquisition may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Actual and potential competition between Swisher and Bayuk in the manufacture and sale of cigars will be eliminated; and
- b. Concentration in the cigar industry will be increased and competition in that industry may be substantially lessened.

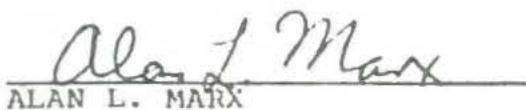
PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of this complaint a preliminary injunction be issued preventing and restraining the defendants and all persons acting on their behalf from consummating the transaction described in paragraph 14 of this complaint;
2. That the acquisition by Swisher or its parent, American Maize, of any interest in the cigar business assets of Bayuk be adjudged and decreed to be in violation of Section 7 of the Clayton Act;
3. That American Maize and its subsidiaries, including Swisher, its successors, and all persons acting on its behalf be permanently enjoined from acquiring either directly or indirectly any interest in Bayuk or in Bayuk's cigar business assets;
4. That plaintiff have such other general and different relief as the nature of the case may require and the Court may deem proper;
5. That the plaintiff recover its costs.

  
WILLIAM F. BAXTER  
Assistant Attorney General

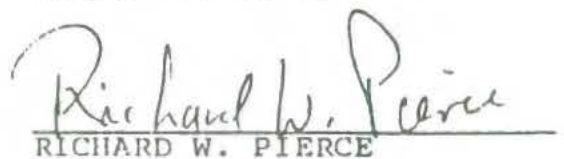
  
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